



July 21, 1999

Mr. Ned Webster
Hill Gilstrap, P.C.
1400 West Abram Street
Arlington, Texas 76013

OR99-2049

Dear Mr. Webster:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 126060.

The Crowley Police Department (the "department"), which you represent, received an open records request for four categories of information regarding the department and a specified officer. In response to the request, you submit to this office for review the information which you assert is responsive.¹ You state that the department will make available to the requestor some responsive information. You contend, however, that the submitted records are excepted from required public disclosure by sections 552.101 and 552.111 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The department contends that the submitted psychological evaluation is excepted from disclosure under section 552.101 in conjunction with section 415.057 of the Texas Government Code and section 611.002 of the Health and Safety Code.²

¹You state that, in response to two categories of the request, you have submitted "both redacted and unredacted versions of the memoranda existing within [the department's] files" for our determination.

²Texas law prohibits the public disclosure of psychological records. Communications between a patient and a mental health professional and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a mental health professional are confidential. Health & Safety Code § 611.002(a).

As for the document at issue, section 415.057 specifically deals with the confidentiality of the results of the psychological evaluation.³ Section 415.057 provides, in pertinent part:

(a) The [Commission on Law Enforcement Officer Standards and Education] may not license a person as an officer or county jailer unless the person has been:

(1) examined by a licensed psychologist or psychiatrist and declared in writing by the psychologist or psychiatrist to be in satisfactory psychological and emotional health to be the type of officer for which a license is sought;

(b) The agency hiring the person to be licensed as an officer or county jailer shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each of the declarations and shall keep a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.* [Emphasis added.]

Based upon section 415.057(b), we agree that the result of the officer's psychological evaluation is confidential and may not be released to the public.

You contend that the remaining submitted information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure interagency or intra-agency communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. *See Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). However, section 552.111 does not protect information regarding routine administrative and personnel matters, nor does it protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5; *see also* Open Records Decision No. 631 (1995) (section 552.111 excepts policy-making information of broad scope that affects governmental body's policy mission). The information for which you claimed the protection of section 552.111 deals, in effect, with

³Chapter 415 of the Government Code deals with Law Enforcement Officer Standards and Education.

personnel and administrative matters. This information does not fall within the scope of this exception, because it does not, in our opinion, relate to “policymaking functions” such that it would fall within the ambit of section 552.111. Therefore, although you have redacted some information based on your interpretation of section 552.111, we advise you that none of the information you submitted may be withheld under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 126060

encl: Submitted documents

cc: Ms. Joy Prichard
Editor, Crowley Star-Review
P.O. Drawer 300
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(w/o enclosures)